No. 91-1009

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

No. _____

RICHARD NEAL SCHOWENGERDT, PETITIONER

v.

THE UNITED STATES OF AMERICA, ET. AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

RICHARD NEAL SCHOWENGERDT
P.O. Box 3284
Lakewood, CA 90711
(714) 545-6255
(310) 331-7014
In Propria Persona

QUESTIONS PRESENTED FOR REVIEW

1. Whether or not petitioner had a reasonable expectation of privacy in his desk and credenza which was given over to him for his exclusive use;

2. Whether or not General Dynamics and government respondents had the right to intrude into petitioner's private sexual activites without a search warrant;

3. Whether or not General Dynamics and government respondents had the right to seize personal materials in petitioner's desk which involved private sexual matters;

4. Whether or not above mentioned respondents had the right to seize various other personal materials in petitioner's desk which were unrelated to his sexual activities, such as his checkbook, gems, framed family photographs, professional associate namecards, and Japanese-American dictionaries;

5. Whether or not petitioner's discharge from the Naval Reserve for alleged statements indicating a bisexual orientation was justified; and

6. Whether or not Petitioner is entitled to damages as a result of above actions by Respondents.

TABLE OF CONTENTS

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

INDEX TO APPENDICES

TABLE OF AUTHORITIES

Cases Page

TABLE OF AUTHORITIES (CONTINUED)

Page

Statutes

U.S. Constitutional Amendments

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

No. _____

RICHARD NEAL SCHOWENGERDT, PETITIONER

v.

THE UNITED STATES OF AMERICA, ET. AL.[1]

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Richard Neal Schowengerdt, the Petitioner herein, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in the above-entitled case on 6 September 1991.

OPINIONS BELOW

The opinion of the Court of Appeals (Appendix A) is reported as Schowengerdt v. U.S. 944 F.2d 483 (9th Cir. 1991) and appears as Appendix A herein. The opinions, judgments, and other supporting documents of the District Court, Appendix B herein, are not reported.

---

1. The other parties in this case are respondents Department of the Navy; John Lehman, Secretary of the Navy; General Dynamics Corporation; C.W. Kessel; K.D. Tillotson; Carl W. Jensen; and Richard S. Day.

JURISDICTION

The opinion and judgment of the court of appeals, Appendix A herein, was entered on 6 September 1991. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1) and this appeal is timely filed.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The First Amendment to the United States Constitution in relevant part:

Congress shall make no law * * * abridging the freedom of speech * * *

2. The Fourth Amendment to the United States Constitution in relevant part:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated * * *

3. The Fifth Amendment to the United States Constitution in relevant part:

No person shall be * * * a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

4. The jurisdiction of the District Court was predicated on Title 28 U.S.C. Sections 1331(a), 1343(4), 1361, 2201, and the Federal Torts Claim Act.

5. The jurisdiction of the Court of Appeals was based on Title 28 U.S.C. Section 1291.

6. The review of administrative action of the Department of the Navy and the Secretary of the Navy was brought under the Federal Administrative Procedure Act, Title 5, U.S.C. Sections 701-706, and the Federal Declaratory Judgment Act , Title 28, U.S.C. Section 2201.

STATEMENT

1. Petitioner, Richard Neal Schowengerdt, in propria persona, filed a Complaint For Personal Injuries And Invasion Of Privacy against numerous respondents on 9 December 1983, alleging deprivations of his right of privacy as a result of various personal items being removed from his desk and credenza in his office space located at the Naval Industrial Reserve Ordnance Plant, Pomona, California, on or about 9-10 August 1982 while he was a civil service employee of the Department of the Navy. Petitioner cited the Fourth Amendment and the Federal Torts Claim Act in redressing grievances, alleging abuses of official authority, unlawful search, seizure, confiscation, disclosure of personal materials, distortion of facts, obstruction of justice, and malicious intent to damage petitioner's civil service and military career. Petitioner prayed for a total of five million dollars in damages against General Dynamics Corporation and various other officials. Pursuant to written stipulation between the parties concerned, petitioner, on 30 April 1984 filed a First Amended Complaint on 30 April 1984. This amendedment clarified the various causes of action with respect to parties concerned, alleged additional U.S. Code and constitutional violations, added pendant jurisdictional claims for invasion of privacy and trespass, prayed for declaratory and injunctive relief, and eliminated the Federal Tort Claims Act provisions. In accordance with an agreement with the U.S. Attorney, petitioner removed the Secretary of

Defense as a defendant and reduced the lawsuit to $4,000,000 upon granting of his Secret clearance by the Department of Defense on 26 April 1984. Respondents filed motions to dismiss on 4 June 1984 and petitioner filed his response on 22 June 1984. A perfunctory and pro forma hearing thereon was held on 2 July 1984 wherein the District Court granted respondents' motions to dismiss upon the allegations that: (1) petitioner did not have a reasonable expectation of privacy in his government office; (2) he had not exhausted his administrative appeals; and (3) he had not stated a cause for conspiracy in his complaint.

2. Petitioner filed a Notice of Appeal on 7 August 1984 and a hearing was held on 6 February 1986. On 30 July 1987 the Ninth Circuit opinion was filed wherein the judgment of the District Court dismissing petitioner's complaint was reversed in part, affirmed in part, and remanded for further proceedings in the lower court. In its opinion, the court held, interalia, that: (1) the District Court had erred in concluding that petitioner could not prove an unreasonable search because he was a government employee or because his desk and credenza were the property of the government; (2) petitioner may have cause for a Bivens action as special factors counselling hesitation appeared to be absent; and (3) it appeared that petitioner had exhausted his administrative remedies concerning the military discharge and that this decision was ripe for judicial review by the District Court. See Schowengerdt v. General Dynamics Corp. 823 F.2d 1328 (9th Cir. 1987) or Appendix C herein.[2]

---

2. While the Circuit Court stated that petitioner had not sufficiently stated a cause for conspiracy, on remand petitioner strengthened his conspiracy charge. Although he has solid evidence to suggest that he was the target of a conspiracy because of a cost cutting beneficial suggestion he submitted in 1981, he has chosen not to address the conspiracy charge in this pleading for purposes of narrowing the scope of the Supreme Court review to essential Constitutional issues. Petitioner reserves the right to readdress the conspiracy issue at a later date in the lower courts should that opportunity arise.

3. Petitioner revised his complaint several times after 1987 in response to discussions with respondents and as a result of lower court actions. In 1988 the District Court reinstated the Federal Tort Claims Act which had earlier been removed and ultimately became Count I, Tort Claims Against The United States of America, of the currently effective Fourth Amended Complaint dated 25 February 1988, Appendix D herein. Count I alleged wrongful acts on the part of General Dynamics and government officials acting under color of federal authority which deprived petitioner of various constitutional rights, impugned his reputation, disrupted his familial harmony, jeopardized his security clearance and employment opportunities, terminated his Naval Reserve career, causing him severe and prolonged mental anguish, anxiety, and emotional distress, and pled for damages in the sum of $1,000,000. Count II, Civil Rights Claims Against General Dynamics Corporation and all Individual Defendants, arose under the First, Fourth, Fifth, Sixth, and Ninth Amendments to the Constitution and alleged that respondents' acts were done with malice and conspirational intent to oppress and harass petitioner, and pled for exemplary and punitive damages in the sum of $1,000,000. Count III, Review of Administrative Action against the Department of the Navy and the Secretary of the Navy, was brought under the Federal Administrative Procedure Act, Title 5, USC Sections 701-706, and the Federal Declaratory Judgment Act, Title 28, USC Section 2201; Count III alleged violations of petitioner's rights under the First, Fourth, Fifth, and Ninth Amendments to the Constitution and also alleged that his discharge was contrary to Naval regulations, was unsupported by substantial evidence, was arbitrary, capricious, and constituted an abuse of discretion; Count III further alleged that petitioner suffered irreparable injury as a consequence of his separation from the Naval Reserve including loss of seniority, pay, active

duty, and retirement benefits, and pled for a Declaratory Judgment and Injunction directed to the Department of the Navy and the Secretary of the Navy to reinstate petitioner to his former position in the Naval Reserve, together with all rights and and benefits to which he was entitled. Count IV, Pendant Jurisdiction Claim for Invasion of Privacy Against General Dynamics Corporation and C.W. Kessel, realleged various claims in Count I and Count II and pled general damages of $1,000,000 and punitive damages of $1,000,000. Count V, Pendant Jurisdiction Claim for Trespass Against Defendant General Dynamics Corporation and C.W. Kessel, realleged various claims in Count I and Count II and pled for general damages of $1,000,000 and punitive damages of $1,000,000.

4. Between December 1988 and December 1989, several decrees were granted by the District Court in favor of respondents and separately appealed by petitioner. Although two judgments granting qualified immunity for all individual Bivens respondents were never properly certified by the District Court, petitioner was allowed to address these issues in his final appeal of 8 January 1990 wherein he moved for consolidation of Appeal No. 89-55191 dealing with the Naval Reserve discharge with Appeal No. 89-55733 dealing with the Federal Tort Claims.

5. On 8 March 1991 oral arguments were heard by the Circuit Court and in its decision and opinion filed on 6 September 1991 the court held that petitioner's: (1) fourth amendment rights were not violated in light of the extreme security measures in place at the facility; (2) expectation of privacy was not reasonable; (3) discharge from the Naval Reserve was affirmed; and (4) other complaints were meritless (See Appendix A). This position signals a significant departure from the majority of case law concerning privacy in the workplace as well as the Circuit Court's own 1987 opinion which will be addressed in the next section.

REASONS FOR GRANTING THE PETITION

1. Significance of Lower Court Ruling. This case presents important constitutional questions concerning privacy in the workplace and has widespread significance, not only for individuals in the government and military-industrial complex, but in all private industries and businesses as well. The decision of the Circuit Court in affirming the District Court's ruling is at variance with several major rulings in other circuit courts as well as in the Supreme Court. This decision was seriously flawed as well because of a false assumption that linked the warrantless search to a genuine government security issue; such a link simply did not exist. The Circuit Court wrongly assumed in agreeing with the District Court's decision that petitioner's activities in some way could constitute a security risk and therefore justified government intrusion and the warrantless search. There are substantive factual issues still at dispute as well as erroneous interpretations of contractor and government regulations in force at the Pomona facility in August 1982. Not only are these interpretations incorrect, this ruling sets a dangerous precedent. Are all defense employee's personal lives to come under constant surveillance and investigation? Should the office of every employee who engages in an extramarital affair be raided and his personal belongings confiscated on the outside chance that he is a security risk? This is precisely the position that respondents and the courts below have taken. If this decision is not overturned by this Court widespread warrantless searches will undoubtedly result, not only throughout the military industrial complex but throughout the entire workplace. Nondefense industrial security personnel as well could be utilized by their management to intrude into the private sexual lives of individuals considered by

management to be a "threat" to their power structure or simply to remove unwanted or unpopular individuals. The defense industry by no means holds a monopoly over the so-called "operational reality of the workplace" theory; any industry or organizational entity can claim high security needs whether it be intellectual property, access to computer facilities, financial assets, ad infinitum. They can assert, on their authority alone without any basis of fact or employee agreement, that the "operational realities" invalidate any legitimate expectation of privacy in an employee's work space or desk. Regardless of the fact that there would be absolutely no work-related subject matter involved, there would be literally no end to warrantless searches, seizure of personal property, and invasion of privacy done in the name of "security."

2. Factual Disputes Still At Issue. The lower court has overlooked General Dynamics' own regulations which stated unequivically that personal materials were not subject to search and should not be commented upon by security guards unless such materials fell into the class of prohibited materials which were listed in the regulation, such as guns, knives, explosives, etc., or were government or contractor equipment or materials, Appendix E herein. Petitioner's personal materials did not fall into this class but were personal and private correspondence dealing with petitioner's sexual activities with individuals outside the workplace. None of these activities had any security nexus as determined by petitioner's own personnel office, Appendix G herein; that is, none of the activities involved foreign nationals or individuals who had any interest whatsoever with petitioner's government work. Respondents and the courts below have erroneously concluded that petitioner agreed to and was aware that searches of this type would routinely be conducted. Such a theory imposes upon petitioner an employment contract which simply never existed.

3. Previously Held Standards for Fourth Amendment Violations In The Workplace. The leading case dealing with this specific question is U.S. v. Nassar 476 F.2d 1111; the court therein stated that a government office is not a public area, and that a trespass can be committed against the occupant employee by an over-zealous employer. The court specifically held that the element of work-relatedness defines where the line must be drawn between a proper employer search of an employee's desk and a trespass. Also, in U.S. v. Blok 188 F.2d 1019, it was held that a government employer could not, under the Fourth Amendment, reasonably search an employee's desk for anything not connected with the work of the office, but could only be made for property needed for official use. The court also held that the employer could not, without a warrant, search for evidence of crimes unrelated to the employee's work. Williams v. Collins 728 F.2d 721, also draws the trespass line at work-relatedness. The analogy of the above cases to the instant matter is apparent when one considers that the instant search was originally made for allegedly "pornographic" material and not for security purposes as shown by Page 1 of Appendix F herein. First, was the material actually "pornographic" by contemporary standards? Petitioner contends that it was private correspondence and no more "pornographic" than copies of Playboy Magazine sold at military exchanges. Second, if the material was deemed to be actually pornographic, contrary to the assertion of the courts below, there is no rule, instruction, regulation, or law forbidding an employee, even one with a security clearance, from keeping allegedly pornographic material in his desk drawer. Respondents herein have never identified any such rule or law that was violated. The District Court stated emphatically in 1984, without reference to any authority, that keeping alleged pornography was a violation of certain rules, regulations, or laws, and that the employer had

an absolute right to search an employee's desk for suspected pornography. After reversal and remand by the Circuit Court, further proceedings in the District Court resulted in respondents posturing their defense upon "security" issues rather than "pornography" and the court's latest ruling which was merely a rehash of the 1984 ruling with unjustified security hyperbole thrown in. For example, both Federal and Private respondents cite O'Connor v. Ortega 480 U.S. 709, 107 S.Ct. 1492, in arguing that petitioner's fourth amendment rights did not apply because of the "operational realities" of the work place and because petitioner was suspected of work-related misconduct. A detailed examination of O'Connor actually supports petitioner's position in the majority ruling..."However, a majority of the Court agrees with the determination of the Court of Appeals that respondent had a reasonable expectation of privacy in his office. Regardless of any expectation of privacy in the office itself, the undisputed evidence supports the conclusion that respondent had a reasonable expectation of privacy at least in his desk and file cabinets..." O'Connor at 710. A most relevant ruling of five Supreme Court justices found that "[c]onstitutional protection against unreasonable searches by the government does not disappear merely because the government has the right to make reasonable intrusions in its capacity as employer." O'Connor at 107 S.Ct. 1505. The essential difference between petitioner's case and that of O'Connor is that his "operational reality" consisted of a classified document environment versus that of a medical doctor with private files on his patients. There is absolutely no more stringent "operational reality" in the instant case than in O'Connor. Here the focus is on work-related classified documents and their security rather than sensitive medical records on patients, neither of which justify seizure of personal correspondence having no relationship to petitioner's work. While

the government obviously had the right to search for such classified documents or other work-related materials, they certainly had no right to search for or seize personal belongings left in the desk, credenza, or file cabinets. Petitioner never signed any agreement nor was he ever made aware of any possibility that his personal belongings in his office or car would be subject to search and/or confiscation unless they were in the aforementioned class of prohibited materials. Both Ortega and petitioner should have enjoyed privacy of personal materials. In Thorne v. El Segundo 802 F.2d 1131,1139 the Ninth Circuit held..."the Constitution prohibits unregulated, unrestrained employer inquiries into personal sexual matters that have no bearing on job performance." Petitioner contends that his excellent civilian employment and exemplary Naval Reserve record should have proven that the District Court erred in ruling that such sexual inquiries were job-related and that he could not have had a reasonable expectation of privacy. The court below also misinterpreted petitioner's testimony in stating that "...He should have known that...the inscription on the manila envelope would serve only to trigger the curiousity of an investigator, or any fellow employee, trained to be alert to possibilities of blackmail..." (See Appendix A at Page 12463, lines 4-7. There are frequently envelopes in employee's desk which are marked "personal and private" which contain sensitive personnel information. Employees were never instructed to open such envelopes. They were trained to look only for material marked Confidential, Secret, etc.; or if we were looking for particular work-related documents, we would limit our search to such materials. If such envelopes were inadvertently opened we always respected the privacy of the individual and put it back where it was found. Petitioner contends that the subject investigator, respondent KESSEL, should have recognized the intimately private nature of the material in the

manila envelope and left it alone. If he truly had serious thoughts about the potentiality for "blackmail" or believed that the material was inappropriate for storage at the Pomona facility, petitioner contends that KESSEL should have discussed the subject with him and made a recommendation to that effect rather than seizing the material which did not belong to General Dynamics or the government. Here again, however, it is essential that it be understood that the original reason given in 1982 for seizure of the material was that it was "pornography" and that the "security" jusitification was used only after 1987 upon remand from the circuit court when it was found that pornography was not a valid reason. The court below has cited United States v. McConney 728 F.2d 1195, 1203 (9th Cir.), cert. denied, 469 U.S. 824 (1984) as partial justification for their decision (See Appendix A Page 12461, Lines 11-13; petitioner has examined this case and sees little resemblance between it and the instant case. McConney was a criminal case involving a warrantless entry, search, and seizure wherein there was reasonable cause to suspect that defendants may arm themselves or destroy evidence. Petitioner, by contrast, was not involved in any illegal activity and was not even present at the time of seizure of materials, therefore he could not have destroyed any so-called "evidence." If respondents felt that petitioner had materials that should not be stored in the facility they could have easily confronted him with the materials and obviated any possibility of such destruction of "evidence." Respondents also seized other personal materials such as framed family photographs, dictionaries, gems, etc., none of which had any relationship to the so-called suspected "misconduct." It should be obvious that respondents' position concerning "suspected work-related misconduct" was simply an excuse without any factual basis whatsoever and that the search and seizure was clearly outside the scope of the employment situation.

4. Inter-relationship of Constitutional Violations. The Circuit Court concurred with the District Court that petitioner's first amendment rights were not violated because he was not discharged for writing about bisexuality but rather for being a bisexual, of which his purely private correspondence was evidence. There is a basic fallacy of reasoning in reaching such a decision. First, the only so-called "evidence" in possession of the authorities were writings wherein petitioner stated an interest in bisexual activities, there being no evidence whatsoever that petitioner actually engaged in such activities or ever made contacts for such purposes. No one can reasonably conclude that a person is actually bisexual merely because he indicates in writings that he is interested in such activities. If such is the intention of the services' regulations, then they should be struck down on constitutional grounds. Suppose upon reflection and such an actual encounter, such a person decides that a bisexual lifestyle is not for him. If he is to be terminated from Naval service merely for such written expressions, his first amendment rights of free expression are chilled by such a severe action or anticipation of such action. Second, in seizing his private correspondence and other personal materials in a warrantless search his fourth amendment rights were abridged, and third, in using such "evidence" as witness against himself, his fifth amendment rights were abridged as well since he has indeed been deprived of private property which has been taken for public use without just compensation. As the record shows, petitioner's Naval Reserve service was exemplary and he received several special awards and recognition for outstanding engineering work by his commanders. His distinguished career was unjustly and abruptly terminated by a kangeroo court of three military officers without any opportunity to present evidence that he was not truly a bisexual. In Ben Shalom v. Secretary of the Army 489 F Supp 964 it was

found that the Administrative Board which recommended her discharge disclosed no evidence of homosexual acts with, or advances to, other reserve personnel, or any evidence that the homosexuality had any relevance or effect on her otherwise excellent performance; the same is true at the hearing concerning petitioner who had an excellent military record and had achieved special recognition for contributions in his reserve unit. Additionally, petitioner has denied any bisexuality or homosexuality. The Court in Ben Shalom held that it could properly issue a writ of mandamus to the Secretary of the Army compelling Ben Shalom's reinstatement and that the writ was not barred by sovereign immunity. The Court's ruling in Beller v. Middendorf 632 F.2d 788 is in accord on these specific issues. The Court in Ben Shalom also noted that the Secretary of the Army could not excercise his judgment in an unconstitutional manner citing Matlovich v. Secretary of Air Force 591 F.2d 852 and Harmon v. Brucker 355 U.S. 579 and noted that significant First, Fifth, and Ninth Amendment claims had been raised by petitioners. The focus of Navy policy in both Dronenburg v. Zech 741 F.2d 1388 and Beller was shown to be homosexual acts, and not on states of mind, as was the case of Ben Shalom. Likewise, the Court is again in accord with that posture in Watkins v. U.S. Army 721 F.2d 687 wherein the Court upheld the discharge of an active, admitted homosexual. Similarly, in Hathaway v. Secretary of the Army 641 F.2d 1376, this Court noted the focus of the military on homosexual acts and conduct. In contrast, in Ben Shalom it was held that the Army unjustly discharged a soldier who "evidences homosexual tendencies, desire, or interest, but is without overt acts." It was specifically the lack of such acts which led the Court in Ben Shalom to issue the prayed-for writ against the reservist's discharge. The instant case is analagous to Ben Shalom as there is no evidence of overt acts on the part of petitioner; furthermore

respondents admit that there are no overt acts, merely that the Military Board chose to "believe" that petitioner was bisexual. As there was no "substantial evidence" as respondents allege, their action in discharging petitioner was based upon "belief" and accordingly, their action was arbitrary and capricious. Violation of petitioner's first and fifth amendment rights due to respondents' actions are in effect a censure of petitioner's rights to freedom of speech and a restriction of his rights to life, liberty, and the pursuit of happiness, a compulsion to be a involuntary witness against himself, and an indictment of petitioner's behavior by an arbitrary military court procedure. At the time of his discharge petitioner had only six years of service remaining to attain retirement privileges and resultant financial rewards for his long service; respondents' actions have terminated petitioner's military career and seriously impaired his ability to obtain appropriate security clearances in civilian positions. These actions by respondents have resulted in a continuing serious deprivation of a fulfilling career, loss of promotional opportunities on the Advanced Tactical Fighter and B-2 programs, and prolonged despair and mental anguish.

5. Respondents Should Not Have Qualified Immunity. Respondents would have the Court believe that their security mission gives them a mandate to do whatever they desire with impunity. They can apply any kind of criteria they wish, however farfetched and fanciful, to justify their invasion of privacy by hiding behind the security smokescreen. Petitioner's possession of a Japanese-English dictionary, cheap mail order gems, check stubs for a few dollars, and sexually oriented letters to prospective partners are linked by imaginative hyperbole and a giant leap of misguided faith to a dream world scenario...an employee likely to be consorting with Japanese agents through the itermediary of a bevy of female blackmailers being paid

off with $15 Black Stars of India. In reality, however, Respondent General Dynamics' Guard Force Policies And Procedures Manual, referenced on Page 3, Paragraph 4, of Appendix E herein clearly establishes the limits of searches in the Pomona facility which does not include personal materials. Respondent KESSEL'S decision to seize petitioner's manila envelope and its contents was a clear violation of the company's policy as outlined in this manual in addition to Constitutional violations of petitioner's right to privacy. Respondent KESSEL'S decision also was based upon false assumptions that petitioner could be subject to blackmail...such an assumption was subjective and not based upon objective facts. Petitioner was known to have had extramarital affairs and his spouse knew of such affairs. The fact that petitioner had a distinctive marking on a particular envelope with regard to its personal and private nature and the desired disposition after his death does not provide respondents with justification for determining that petitioner could be subject to blackmail. Since respondent KESSEL'S recollection of the incident under deposition in 1988 conflicts with the original 1982 NIS report (See Page 1 of Appendix F herein), there is a clear indication that respondents are attempting to establish a stronger security justification for the search and seizure than actually existed. Appendix G referenced on Page 12 herein establishes that no disciplinary action was taken inasmuch as Appellant had not violated any government regulations. Appendix H illustrates Appellant's excellent Naval Reserve and civilian employment record maintained during this period. The aforementioned excerpts clearly demonstrate that there was no "nexus" between petitioner's activities and his work or security clearance and that petitioner exhibited an above average performance level.

CONCLUSION

The lower court's ruling in this case is at variance with the majority of case law pertaining to privacy in the workplace. Because of the very real potential of setting a dangerous precedent for warrantless searches and seizures throughout the entire workplace, it is essential that the lower court's ruling be reviewed in the interest of protection of individual privacy under the Fourth Amendment. A review of this case will reveal that petitioner's involvement in extramarital affairs had no potential whatsoever for compromise of security information inasmuch as his spouse knew of similar affairs and his envelope with distinctive markings relative to its disposition after his death was only done to protect his wife from further grief. There are also substantial factual disputes still at issue concerning regulations in place at the Pomona facility for which petitioner was on notice. In addition, petitioner's rights of free expression under the First Amendment were clearly chilled by the effect of his correspondence concerning his interest in bisexuality which resulted in his discharge from the Naval Reserve. Likewise, his rights under the Fifth Amendment were abridged as his written expressions were used as "evidence" against him in the military court. The entire matter was most unjust in view of his exemplary employment record, both as a civilian employee and naval reservist. Therefore, it is respectfully requested that a writ of certiorari issue to review the judgment and opinion of the Court of Appeals in this matter.

Dated: 27 November 1991

Richard N. Schowengerdt

In Propria Persona